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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,317	07/12/2000	Donald E. Weder	8403052	2284

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EXAMINER

GELNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No

09/614,317

Examiner

Jeffrey L. Gellner

Applicant(s)

09614317

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.136(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2003
- 2a) ☒ This action is **FINAL** 2b) ☐ This action is non-final
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-64 is/are pending in the application.
- 4a) Of the above claim(s) 42-64 is/are withdrawn from consideration
- 5) ☐ Claim(s) _____ is/are allowed
- 6) ☒ Claim(s) 31-41 is/are rejected
- 7) ☐ Claim(s) _____ is/are objected to
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a)
- 11) ☐ The proposed drawing correction filed on _____ is a) ☐ approved b) ☐ disapproved by the Examiner
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f)
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))
- * See the attached detailed Office action for a list of the certified copies not received
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other

DETAILED ACTION***Election/Restrictions***

Newly submitted claims 42-64 are directed to an invention that is independent or distinct from the invention originally claimed for the following reason: The original election, paper no. 6, was directed to a flexible sleeve with a tapered lower end having an angle between the sides of from about 14° to about 40°. This sleeve is disclosed in Figs. 1 and 3. New Claims 42-64 are directed to a sleeve with an angle between the sides from about 80° to about 100°.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 42-64 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31, 32, 34-37, 39, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman et al. (US 3,767,104) in view of Weder (US 4,297,811).

As to Claims 31 and 32, Bachman et al. discloses a preformed flexible sleeve (12 of Figs. 1 and 2; col. 1 line 6) comprising a first panel (Fig. 1 - seen by reader); a second panel (Fig. 2 -

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not seen by reader): connected along a first side (in Fig. 1 the side with leadline of 12) and a second side (in Fig. 1 the side without leadline of 12); and having an upper end (14 of Fig. 1) with an opening (region around leadline of 14 in Fig. 2) and an upper edge (region around end of leadline of 14 in Fig. 1); the first and second panels tapered from the upper end to a closed lower end (13 of Fig. 3), the first and second sides having an angle therebetween from about 14° to about 40° (Examiner calculated the angle between the sides from the Fig. on the first page of the patent to be 30°). Not disclosed is an adhesive disposed upon the inter surfaces of the panels. Weder ('811), however, discloses adding adhesive (col. 2 lines 36-37) to a sleeve for a flower pot. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sleeve of Bachman et al. by adding an adhesive on the inside panels of the sleeve as disclosed by Weder ('811) so as to attach the disc (15) more securely to the sleeve.

As to Claim 34, Bachman et al. as modified by Weder ('811) further disclose the sleeve tip conical (13 of Fig. 1 of Bachman et al.).

As to Claims 35 and 37, the limitations of Claim 1 are disclosed as described above. Not disclosed is the upper end having a non-linear edge. Examiner takes official notice that it is old and notoriously well known in the retail nursery art to have floral sleeves with non-linear upper edges where the upper edge is positioned near the rim of a pot in the sleeves. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by adding a non-linear upper edge and to position a pot so that the rim is near the edge depending upon consumer tastes.

As to Claim 36, Bachman et al. as modified by Weder ('811) further disclose the sleeve sized to contain a pot (see Fig. 1 of Bachman et al.).

As to Claim 39, Bachman et al. as modified by Weder ('811) further disclose the adhesive positioned on the sleeve in a location where it would connect to a pot when a pot is placed in the sleeve (if disc is removed and when a pot is placed in the sleeve the adhesive could align with the pot's outer surface).

As to Claim 40, Bachman et al. as modified by Weder ('811) further disclose the sleeve made of paper (Bachman et al. at col. 1 lines 48-50)

As to Claim 41, Bachman et al. as modified by Weder ('811) further disclose the sleeve from .1 to 30 mils (Bachman et al. at col. 2 lines 40-44).

Claims 33 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bachman et al. (US 3,767,104; document BY on Applicant's 1449) in view of Weder (US 4,297,811; document CJ on Applicant's 1449) in further view of Landau (US 5,443,670; document D1 on Applicant's 1449).

As to Claim 33, the limitations of Claim 1 are disclosed as described above. Not disclosed is the angle of the sides from 16° to 24°. Landau, however, discloses a floral sleeve with an angle of 20° (Examiner's measurement of angle of sleeve on patent's fist page). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by making the bottom angle from 16° to 24° as disclosed by Landau so as to suit consumer demand.

As to Claim 38, the limitations of Claim 1 are disclosed as described above. Not disclosed is the sleeve having an initial flattened position. Landau, however, discloses the sleeve with a flattened initial condition (see Fig. 2 of Landau). It would have been obvious to one of

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ordinary skill in the art at the time of the invention to further modify the sleeve of Bachman et al. as modified by Weder ('811) by having a sleeve with a flattened initial condition as disclosed by Landau so as to reduce storage requirements.

Response to Arguments

Applicant's arguments filed 3 February 2003 have been fully considered but they are not persuasive. Applicant's arguments are (1) Weder ('811) does not teach applying an adhesive to a "sleeve" as defined in the floral industry (Remarks page 11 last para.); (2) Bachman et al. discloses the use of tape to secure the disc (Remarks page 12 1st complete para.); and (3) Applicant has amended to use the transitional "consisting essentially of" to require any rejection using Bachman et al. to show motivation for discarding the disc (Remarks page 12 last para.).

As to argument (1), Examiner considers Bachman et al. to disclose a sleeve. Weder ('811) discloses the use of laminate to be used as a wrap (Weder ('811) at col. 2 lines 36-39) or "for purposes other than covering a flower pot" (Weder ('811) at col. 2 lines 36-39). Examiner considers a sleeve as disclosed by Bachman et al. to be an obvious use of the laminate of Weder ('811) since sleeves are notoriously well known in the floral industry.

As to argument (2), Examiner considers the adhesive to be an obvious equivalent to tape. The use of adhesive would not necessarily have the defects suggested by Applicant.

As to argument (3), Examiner considers, in the instant, amended, independent claim, the use of the transitional phrase "consisting essentially of" to be construed as equivalent to "comprising" because there is not clear indication in the specification or claims of what the basic and novel characteristics of the invention actually are (see MPEP § 2111.03).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beltle discloses in the prior art a tapered, conical sleeve with adhesive on the sidewalls. Weder (403) discloses in the art a tapered, conical sleeve with adhesive on the sidewalls.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.4113.



Jeffrey L. Gellner

